



## SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2015-0070]

Social Security Acquiescence Ruling (AR) 16-1(7), Boley v. Colvin: Judicial Review of an Administrative Law Judge's Order Finding No Good Cause for a Late Hearing Request and Dismissing the Request as Untimely—Titles II and XVI of the Social Security Act

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling (AR).

SUMMARY: We are publishing this Social Security AR to explain how we will apply a holding in a decision of the United States Court of Appeals for the Seventh Circuit that we have determined conflicts with our interpretation of the law regarding judicial review of an administrative law judge's (ALJ's) order finding no good cause for a late hearing request and dismissing the request as untimely.

DATES: *Effective:* **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

FOR FURTHER INFORMATION CONTACT: Todd Lewellen, Office of the General Counsel, Office of Program Law, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-3309, or TTY 410-966-5609, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-

1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION: We are publishing this Social Security AR in accordance with 20 CFR 402.35(b)(2), 404.985(a), (b), and 416.1485(a), (b) to explain how we will apply a holding in Boley v. Colvin, 761 F.3d 803 (7th Cir. 2014), regarding judicial review of an ALJ's order finding no good cause for a late hearing request and dismissing the request as untimely.

An AR explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

This AR explains how we will apply the holding in Boley v. Colvin to claims in which the claimant makes a late request for an ALJ hearing, the ALJ dismisses the hearing request and finds that the claimant lacked good cause for missing the appeal deadline, and then the claimant timely seeks review of the ALJ's dismissal by the Appeals Council (AC). We will apply this AR to all claims in the Seventh Circuit in which the AC denied a request for review of such a dismissal on or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If the AC denied a request for review of an ALJ dismissal between August 4, 2014 (the date of the Court of Appeals' decision) and **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**(the effective date of this AR), the claimant may request that we apply the AR.

When we received this precedential Court of Appeals' decision and determined that an AR might be required, we began to identify those claims that were pending before the agency that might be subject to readjudication if we subsequently issued an AR. Because we have determined that an AR is required and are publishing this AR, we will send a notice to those individuals whose claims we have identified. In the notice, we will provide information about the AR and the claimant's rights under the AR. However, claimants may request that we apply this AR to their claims even if they did not receive a notice, as provided in 20 CFR 404.985(b)(2) and 416.1485(b)(2).

If we later rescind this AR as obsolete, we will publish a notice in the Federal Register to that effect, as provided in 20 CFR 404.985(e) and 416.1485(e). If we decide to relitigate the issue covered by this AR, as provided by 20 CFR 404.985(c) and 416.1485(c), we will publish a notice in the Federal Register stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance)

Dated: March 3, 2016.

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Carolyn W. Colvin,  
Acting Commissioner of Social Security

## ACQUIESCENCE RULING 16–1(7)

Boley v. Colvin, 761 F.3d 803 (7th Cir. 2014): Judicial Review of an Administrative Law Judge’s Order Finding No Good Cause for a Late Hearing Request and Dismissing the Request as Untimely—Titles II and XVI of the Social Security Act.

**ISSUE:** May a claimant obtain judicial review of an administrative law judge (ALJ)’s order finding no good cause for a late hearing request and dismissing the request as untimely?

**STATUTE/REGULATION/RULING CITATION:** Sections 205(g) and 1631(c)(3) of the Social Security Act (42 U.S.C. 405(g), 1383(c)(3)); 20 CFR 404.900(a), 404.901, 404.903(j), 404.933(b)-(c), 404.955, 404.957, 404.959, 416.1400(a), 416.1401, 416.1403(a)(8), 416.1433(b)-(c), 416.1455, 416.1457, 416.1459.

**CIRCUIT:** Seventh (Illinois, Indiana, Wisconsin).

**APPLICABILITY OF RULING:** This ruling applies to claims in which a claimant resides in a State within the Seventh Circuit and in which an ALJ entered an order finding no good cause for a late hearing request, the ALJ dismissed the request as untimely, the claimant requested review by the Appeals Council (AC), and the AC denied review.

**DESCRIPTION OF CASE:** Marilyn Boley filed a claim for disability insurance benefits. We denied her claim at the initial and reconsideration levels of administrative review. Although she was represented by an attorney at the time we denied her request for reconsideration, we sent notice of the reconsidered determination to Ms. Boley, but not to her attorney. After learning that we had denied Ms. Boley’s request for reconsideration, the attorney requested a hearing. An ALJ dismissed that request as untimely because the regulations at 20 CFR 404.933(b) and

416.1433(b) require a claimant to request a hearing within 60 days of the claimant's receipt of a reconsidered determination. While regulations allow the ALJ to extend the time for requesting a hearing when a claimant has "good cause" for the late request, the ALJ ruled that Ms. Boley lacked good cause because she had received the reconsideration notice and could have filed a hearing request herself. Ms. Boley filed a timely request for review of the ALJ's dismissal order with the AC. When the AC denied her request for review of the ALJ's dismissal order, Ms. Boley sought judicial review.

**HOLDING:** The United States Court of Appeals for the Seventh Circuit concluded that a claimant for Social Security benefits may obtain judicial review of an ALJ's dismissal order finding no good cause for a late hearing request after exhausting all available administrative remedies.

**STATEMENT AS TO HOW BOLEY DIFFERS FROM THE AGENCY'S POLICY:**

Unlike the holding in Boley, our policy provides that an ALJ's order finding no good cause for a late hearing request and dismissing the request as untimely is not subject to judicial review. Section 205(g) of the Social Security Act, 42 U.S.C. 405(g), "clearly limits judicial review to a particular type of agency action, a 'final decision of the [Commissioner of Social Security] made after a hearing.'" Califano v. Sanders, 430 U.S. 99, 108 (1977). The Supreme Court has also recognized that "the term 'final decision' is left undefined by the Act and its meaning is to be fleshed out by the [Commissioner's] regulations." Weinberger v. Salfi, 422 U.S. 749, 751 (1975).

Under our regulations, the claimant must first obtain an "initial determination" and then complete an administrative review process consisting of several steps, "which usually must be

requested within certain time periods,” 20 CFR 404.900(a), 416.1400(a), before obtaining a judicially reviewable “decision.” Not all agency actions constitute “initial determinations” subject to the administrative review process and, ultimately, judicial review. 20 CFR 404.903, 416.1403(a) (identifying numerous administrative actions that are not initial determinations). For example, although we will extend the time to seek a hearing upon a showing of good cause, 20 CFR 404.933(c), 416.1433(c), an administrative action denying a request to extend a time period is not an initial determination subject to the administrative review process or judicial review. 20 CFR 404.903(j), 416.1403(a)(8).

Further, our regulations provide that a “decision” means “the decision made by the administrative law judge or the Appeals Council.” 20 CFR 404.901, 416.1401. Of direct relevance here, the regulations distinguish between an ALJ’s “decision” and an ALJ’s dismissal of a claimant’s request for a hearing. An ALJ’s decision is subject to review by the agency’s AC and ultimately may be subject to judicial review. 20 CFR 404.955, 416.1455. An ALJ’s dismissal of a hearing request, 20 CFR 404.957, 416.1457, on the other hand, is not a “decision” within the meaning of section 205(g) of the Act. Rather, it is binding unless vacated by an ALJ or the AC, and the dismissal of a hearing request is not subject to judicial review. 20 CFR 404.959, 416.1459.

#### EXPLANATION OF HOW WE WILL APPLY THE BOLEY DECISION WITHIN THE CIRCUIT:

This Ruling applies only to claims in which all the following criteria are met:

1. The claimant did not timely request a hearing before an ALJ;

2. The ALJ dismissed the claimant's request for a hearing;
3. The basis for the ALJ's dismissal of the hearing request was that the claimant failed to show good cause for untimely filing of the hearing request;
4. The claimant timely filed a request for the AC to review the ALJ's dismissal of the hearing request;
5. The AC denied the claimant's request for review; and
6. The claimant resided in Indiana, Illinois, or Wisconsin at the time the AC denied review.

If a case meets these criteria, we will send notice explaining that the claimant may appeal the dismissal to the Federal district court for the judicial district in Illinois, Indiana, or Wisconsin in which the claimant resides.

[FR Doc. 2016-05663 Filed: 3/11/2016 8:45 am; Publication Date: 3/14/2016]